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IN THE

Supreme Court of the United States

OCTOBER TERM, 1959

No. 86

HURON PORTLAND CEMENT COMPANY,
a Michigan corporation,
Appellant,
vs.
CITY OF DETROIT, a Michigan municipal corporation,
BENJAMIN LINSKY, Chief, Bureau of Smoke
Abatement, P. J. LAREAU,
Appellees

APPEAL FROM THE SUPREME COURT OF THE STATE
OF MICHIGAN

BRIEF FOR THE APPELLEES

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action was pending before the Pennsylvania Court, the Interstate Commerce Commission, acting under the Motor Carrier Act of 1935, issued a report which, in effect, said that motor carriers carrying another vehicle over the cab or head of the driver of the carrier vehicle was just as safe as other highway trucks and, therefore, permitted under existing Interstate Commerce Commission regulations. The United States Supreme Court, in the face of the Interstate Commerce Commission's findings, upheld the Pennsylvania Act and said:

> "As a matter of statutory construction, congressional intention to displace the local laws in the exercise of its commerce powers is not, in general, to be inferred unless clearly indicated by those considerations which are persuasive of the statutory purpose. *This is especially the case when public health and safety are concerned.*" (Emphasis supplied.)

In the case of *H. P. Welch Company v. State of New Hampshire*, 306 U. S. 79-85, 59 S. Ct. 438, 83 L. ed. 500, the plaintiff was appealing from a judgment of the Supreme Court of the State of New Hampshire dismissing an appeal from an order of the State Highway Commission suspending the registration certificate of an interstate motor vehicle carrier for violation of a state statute declaring unlawful the operation, on state highways, of motor vehicles for specified transportation, by drivers who have been continuously on duty for more than twelve hours. The court in its opinion said:

> "There is need of local supervision of operation of motor vehicles to prevent collisions, to safeguard pedestrians, and the like. Unquestionably, reasonable regulation of periods of continuous driving is an appropriate measure. In view of the efforts of governmental authorities everywhere to mitigate

> the destruction of life, limb and property resulting from the use of motor vehicles, it cannot be inferred that Congress intended to supersede any state safety measure prior to the taking effect of a federal measure found suitable to put in its place. Its purpose to displace the local law must be definitely expressed. *Mintz v. Baldwin*, 289 U. S. 346, 350, 77 L. ed. 1245, 1249, 53 S. Ct. 611. The rule applicable is clearly stated in *Illinois C. R. Co. v. State Pub. Utilities Commission*, 245 U. S. 493, 510, 62 L. ed. 425, 438, 38 S. Ct. 170, P. U. R. 1918C, 279: • • • Plainly Congress by mere grant of power to the Interstate Commerce Commission did not intend to supersede state police regulations established for the protection of the public using state highways." (83 L. ed. 505.)

In the case of *Kelly v. Washington*, 302 U. S. 1, 82 L. ed. 3, 58 S. Ct. 87, also cited and relied upon by plaintiff, the respondent was the owner and operator of a large number of tug boats that were licensed under Federal Law. For the most part the tugs were employed only in intrastate commerce; however, some of the boats were utilized in interstate commerce.

The respondents, in attempting to prohibit the enforcement of a statute of the State of Washington providing for the hull and machinery inspection of the type of tugs owned by respondents, urged that the statute was invalid because Congress had pre-empted the field by enacting legislation requiring the inspection of vessels engaged in interstate commerce. Also, it was contended that if the Federal Government had not completely occupied the field of regulation with which the local law was concerned, the state statute was, nevertheless, in contravention of the Commerce Clause, i. e., Art. I, Section 8, Clause 3 of the Constitution of the United States, because the local inspections imposed an unreasonable burden upon interstate commerce in an area where uniformity of regulation was necessary.

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BRIEF FOR THE APPELLEES

STATEMENT

The City of Detroit adopted Ordinance 167-E, as amended, on October 16, 1947 (Pl.'s Ex. 5, R. 37). On December 16, 1955, the appellant was complained against in the Recorder's Court of the City of Detroit for allowing the emission of dense black smoke in violation of Section 2.2a of Ordinance 167-E (R. 37). The appellant subse-

quently filed a Bill of Complaint asking that the City of Detroit be enjoined from prosecuting and alleging that he was engaged in interstate commerce and the ships in question which had emitted the dense smoke had been approved by the United States Coast Guard and as a result of such inspection could not be regulated by the City of Detroit because the Congress of the United States, in adopting the various navigation and steamship laws, had pre-empted the field (R. 3-7). At the trial of the above-entitled cause, the defendant City of Detroit introduced unrebutted testimony that there was equipment that was available that could be installed on appellant's ships that would comply with the number one objective of the International Joint Commission and the Smoke Abatement Code of the City of Detroit (R. 14-16).

SUMMARY OF ARGUMENT

The Smoke Abatement Code of the City of Detroit is a reasonable ordinance needed to protect the health and welfare of the people of the City of Detroit; that the Congress of the United States, in adopting the regulations which control steamships of the United States, had no intention of superseding air pollution ordinances of the various cities of the United States and, more specifically, the Smoke Abatement Code of the City of Detroit; that there is no conflict between the United States regulation of steamships and the City Code; that the regulation of air pollution is for the benefit of those residing in the community where such a regulation has been adopted, and the regulation of steamships is for the safety of the crews, freight, and passengers of such ships; that air pollution does not admit of only one plan but, to the contrary, there must be a diversity of treatment to meet the needs of each community. Uni-

formity of regulation is not necessary and not desirable because such regulation is in no way burdensome to interstate commerce.

No claim is made that the City of Detroit has ever made an annual inspection or required a license of ships engaged in interstate or intrastate commerce, nor does the appellant claim in his Bill of Complaint (R. 3-7) that he was required to have a license or required to undergo an annual inspection.

ARGUMENT

I.

WHERE CONGRESS HAS PROVIDED FOR THE INSPECTION AND LICENSING OF STEAMSHIPS, A CITY MAY NOT APPLY ITS SMOKE ORDINANCE TO SUCH STEAMSHIPS WHERE THE ORDINANCE IN EFFECT PROHIBITS THE USE OF THE EQUIPMENT ON SUCH STEAMSHIPS.

The Common Council of the City of Detroit, knowing that excessive air pollution had become detrimental to the health and welfare of its citizens, adopted Ordinance 167-E, the official Smoke Abatement Code of the City of Detroit. The preamble to the Code is as follows:

> "Whereas, the excessive emission of dense smoke within the corporate limits of the City of Detroit and the resultant effect upon the public health and welfare require the adoption of a comprehensive and integrated plan of smoke control; and
>
> "Whereas, in conjunction with the smoke control program it is desirable to adopt appropriate regulations to reduce air pollution caused by excessive soot, cinders, fly ash, dust, noxious acids, fumes and gases, the emission of which is detrimental to the

health and welfare of the residents of the City: Now, Therefore,"

The complete Federal regulations for steamships which were first enacted by Congress in 1871 are now contained in Chapter 14, Title 46 USCA. In the case of *Ace Waterways, Inc., v. Fleming*, 98 F. Supp. 666 (1951), the Court, in construing the above Federal regulations, said in part, at p. 667:

> "The statutory scheme for the inspection of vessels is found in the Revised Statutes. More recently these provisions have been compiled in Chapter 14 of Title 46 of the United States Code Annotated. The various sections of Chapter 14 of Title 46 impose certain requirements in respect to the inspection and regulation of vessels, the purpose being largely to protect life and property."

And at p. 668, the court said as follows:

> "Section 391; which is a part of Chapter 14 of Title 46 of United States Code, Annotated, imposes the duty on the Coast Guard of inspecting the hull of every vessel once every year and of satisfying itself that every such vessel is in a condition to warrant the belief that she may be used in navigation with safety to life, and that all the requirements of law in regard to fires, boats, life preservers, etc., are faithfully complied with. Section 481 requires every vessel to be provided with such number of lifeboats as will best secure the safety of all persons on board such vessel in case of disaster. The Commandant of the Coast Guard is authorized to fix and determine by rules and regulations the character of lifeboats and similar equipment to be used on such vessels. (App. 1b.)
>
> "The statutes in question being intended to protect the safety of life and property and to minimize

disaster at sea, should receive a liberal construction in the public interest."

The Supreme Court of the State of Michigan in 1894 in the case of *Cheboygan Lumber Company v. Delta Transportation Co.*, 100 Mich. 16, in construing the original federal regulation of steam vessels, specifically Chapters 1 and 2 of Title 52, Revised Statutes, Sec. 4400, said:

> "It is manifest that the purpose of the United States statute is the protection of the boat, its passengers, crew, and freight. None of the provisions of the law show any intent to legislate upon, or provide for, the protection of persons and property on land. If we look to the regulations adopted by the board of inspectors, the same purpose is manifest."

It is apparent that the municipal smoke ordinance of the City of Detroit, Ordinance 167-E, is concerned with the regulation of smoke that is emitted from the chimney or stack, while the Federal navigation laws, under which the plaintiff and appellant herein asserts immunity from prosecution, embrace only such regulations as would protect steam vessels and the passengers, crews, and freight of such vessels. Therefore, it would conclusively appear that the Congress of the United States and the Common Council of the City of Detroit were legislating for different purposes and on different subject matters when they adopted the two regulations in question.

The appellant, Huron Portland Cement Company, on page 13 of its brief states that the Detroit Ordinance necessarily dictates the equipment which must be used upon such vessels and, therefore, intrudes upon a field pre-empted by Congress.

In considering the question of pre-emption, the general rule is properly stated in *11 Am. Jur., Commerce* §24:

> "• • • However, the intention of Congress to supersede or exclude state action is not lightly to be inferred. In order for an act of Congress to supersede a state statute, the repugnance or conflict must be direct and positive, so that the two acts cannot be reconciled or consistently stand together, or, at least, Congress must have manifested a purpose to exercise its paramount authority over the subject. Congressional regulation of a business does not nullify state regulation of the same business, if the Federal act does not cover the same field or is consistent with the state legislation or if Congress has so circumscribed its regulation as to leave part of the subject open to state action. It is only where there is an actual and distinct conflict that the state law will be displaced and then only as to that part of the state law in actual conflict with the Federal law."

Very early in the judicial history of this country the United States Supreme Court determined that the states under their police power had the authority to adopt regulations in matters which were of local concern even though in some measure affect interstate commerce and also regulate interstate commerce. *Cooley v. Port Wardens*, 12 How. (U. S.) 299, 13 L. ed. 996.

The courts have gone to great lengths to allow the states and municipalities the right to regulate interstate commerce to protect the health, safety and welfare of its citizens.

The question as to whether a particular Federal Act precludes any action by a state in the same field has been before this court many times, the general rule being that a state law enacted under any of the reserved powers • • • especially if under the police power • • • is not to be set aside as inconsistent with an act of Congress unless there is actual repugnancy, or unless Congress has at least mani-

fested a purpose to exercise its paramount authority and the intent to supersede the exercise by the state of its police power, as to matters not covered by the Federal legislation, is not to be inferred from the mere fact that Congress has seen fit to circumscribe its regulations and to occupy a limited field. Intent is never to be implied. *Missouri, Kansas and Texas Railway Company of Texas v. Harris,* 234 U. S. 412, 58 L. ed. 1377, 34 S. Ct. 790.

We will examine a few cases wherein there has been the question of Federal legislation pre-empting the field to the exclusion of state legislation. In the case of *Savage v. Jones,* 225 U. S. 501, 56 L. ed. 1182, 32 S. Ct. 715, the State of Indiana had adopted a regulation which required that anyone selling a commercial food product must label that product and on the label they must state the ingredients contained within the package. A foreign citizen from Minnesota objected on the grounds that the statute was repugnant to the Federal Food and Drug Act. The court held that the Federal Act was concerned with adulterated and misbranded foods but did not require a disclosure of ingredients while the State Act dealt particularly with this matter. The Court held the Indiana Statute valid and further that there was no conflict because the Congress had seen fit to circumscribe its legislation and to occupy a limited field. See also *Reid v. Colorado,* 187 U. S. 137, 47 L. ed. 108, 23 S. Ct. 92.

In *Maurer v. Hamilton,* 309 U. S. 598, 84 L. ed. 969, 60 S. Ct. 726, the State of Pennsylvania passed a law making it unlawful for a person to operate a vehicle on the highway carrying any other vehicle any part of which is above the cab of the carrier vehicle or over the head of the operator of the carrier vehicle. The plaintiff-appellant filed suit alleging the Act to be unconstitutional. While this

Although Congress and the State of Washington both had enacted legislation requiring an inspection of the hulls and machinery of motor driven tugs, the Supreme Court, in upholding the state law, reasoned that the local law was not inconsistent or incompatible with the Federal Law inasmuch as the state law related to tugs that were not embraced within the scope of the Congressional legislation.

In arriving at its decision, the Supreme Court set forth the following conclusions and well-accepted principles of law, which are material to the case presently before the court:

> "Under our constitutional system, there necessarily remains to the States, until Congress acts, a wide range for the permissible exercise of power appropriate to their territorial jurisdiction although interstate commerce may be affected. * * * States are thus enabled to deal with local exigencies and to exert in the absence of conflict with federal legislation an essential protective power. And when Congress does exercise its paramount authority, it is obvious that Congress may determine how far its regulations shall go. There is no constitutional rule which compels Congress to occupy the whole field. Congress may circumscribe its regulation and occupy only a limited field. When it does so, state regulation outside that limited field and otherwise admissible is not forbidden or displaced. The principle is thoroughly established that the exercise by the State of its police power, which would be valid if not superseded by Federal action, is superseded only where the repugnance or conflict is so 'direct and positive' that the two acts cannot 'be reconciled or consistently stand together'. * * *" (Pp. 10 and 11.)

> "The principle was thus emphatically stated: 'It should never be held that Congress intends to

supersede or by its legislation suspend the exercise of the police powers of the States, even when it may do so, unless its purpose to effect that result is clearly manifested.' * * *" (P. 11.)

"The application of the principle is strongly fortified where the State exercises its power to protect the lives and health of its people. But the principle is not limited to cases of that description. * * * In the instant case, in relation to the inspection of the hull and machinery of respondents' tugs, the state law touches that which the Federal laws and regulations have left untouched. There is plainly no inconsistency with the Federal provisions. * * *" (Pp. 12 and 13.)

"We have found that in relation to the inspection of the hull and machinery of these tugs, in order to insure safety and seaworthiness, there is a field in which the state law could operate without coming into conflict with present Federal laws. Is that a subject which necessarily and in all aspects requires uniformity of regulation and as to which the State cannot act at all, although Congress has not acted? We hold that it is not. A vessel which is actually unsafe and unseaworthy in the primary and commonly understood sense is not within the protection of that principle. The State may treat it as it may treat a diseased animal or unwholesome food. In such a matter, the State may protect its people without waiting for Federal action providing the state action does not come into conflict with Federal rules. If, however, the State goes further and attempts to impose particular standards as to structure, design, equipment and operation which in the judgment of its authorities may be desirable but pass beyond what is plainly essential to safety and seaworthiness, the State will encounter the principle that such requirements, if imposed at all, must be through the action of Congress which can establish a uniform rule. Whether the State in a par-

ticular matter goes too far must be left to be determined when the precise question arises.

> We have mentioned the inspection of hull and machinery of respondents' vessels in order to insure safety and seaworthiness. There may be other requirements of the state act which also lie outside the bounds of the Federal action thus far taken and as to which uniformity of regulation is not needed. That question cannot be satisfactorily determined on this record and must also remain for decision as it may be presented in the future in connection with some particular action taken by the state authorities. Our conclusion is that the state act has a permissible field of operation in relation to respondents' tugs and that the state court was in error in holding the act completely unenforceable in deference to Federal Law. * * *" (Pp. 14 and 15.)

The manifest objective of the Detroit Smoke Abatement Ordinance is to protect the health and welfare of the people of the City of Detroit by prohibiting the emission of smoke, except under certain circumstances, from any source whatever of a density equal to or greater than the density described as Number 2 of the Ringlemann Chart (App.).

No attempt is made by the City of Detroit in its ordinance to prescribe the type of equipment that must be used by vessels engaged in coasting or in interstate commerce. The City, however, requires that whatever type boiler equipment used, the vessel must not emit smoke beyond a specific density.

Federal laws relating to the inspection and licensing of vessels engaged in coasting and interstate commerce are comprehensive and are directed at insuring the seaworthiness of the vessels by requiring, *inter alia*, that a ship's boiler meet certain safety requirements. The Federal law neither makes an attempt to control the emission of smoke

by vessels nor does it attempt to prevent air pollution by vessels in communities through which they sail. Although the Congress of the United States and the Common Council of the City of Detroit have enacted legislation in the same general field, Congress has left untouched the area of smoke emission by vessels engaged in coasting or interstate commerce.

Approval and certification by the Coast Guard of a vessel's equipment is merely recognition of the vessel's seaworthiness, and, so far as seaworthiness is concerned, authorizes the vessel to engage in coasting and interstate commerce for specified periods of time. It is our contention that the effect of the issuance of a certificate by the Coast Guard in conformity with Federal law is not to grant *carte blanche* permission to a company engaged in business for profit to operate its vessels in any manner, no matter how harmful to others, merely because the vessel has been adjudged seaworthy by the Coast Guard.

As announced in *Kelly v. Washington, supra,* the exercise of a local government of its police powers is superseded by Federal law only where there is repugnance or conflict with the Federal law so "direct and positive" that the two laws cannot be reconciled or consistently stand together. In view of the respective objectives of the Federal and local law in the case at bar, it is urged that they are not incompatible and that they can consistently stand together.

The local ordinance makes no attempt whatever to impose vessel boiler standards to insure their safe operation or seaworthiness. Protection of the health and welfare of the people of the City of Detroit by preventing air pollution is the area of the field with which the local ordinance is concerned. Vessels producing noxious and harmful

smoke are not the proper instruments of interstate commerce, and it is strongly urged by the City of Detroit that the emission by a vessel of such smoke should not receive the protection of the Commerce Clause.

Again, in *Kelly v. Washington, supra,* the State of Washington argued that it had no intention of enforcing any local regulation that would conflict with Federal law; and, we wish to emphasize that the record in the case before this Court does not show that the City of Detroit ever required any inspection or licensing of the respondent's vessels. The only action taken by the City was to give respondent a violation notice for emitting smoke contrary to Section 2.2a of the Detroit Smoke Abatement Ordinance.

The Federal legislation in no way considers the problem of smoke emission, nor do the inspectors (Coast Guard) take into consideration the problem of air pollution when they make their annual inspections (App. 5a).

(A) Congress Has Determined Who Shall Be Responsible for the Regulation of Air Pollution.

The Congress of the United States enacted Public Law 159 on July 14, 1955. 69 Stat. 322, 323, Title 42 U. S. C. A. Sec. 1857, which provides in part (App. 5b):

> *Declaration of Policy.*
>
> "In recognition of the dangers to the public health and welfare, injury to agricultural crops and livestock, damage to and deterioration of property, and hazards to air and ground transportation, from air pollution, it is declared to be the policy of Congress to preserve and protect the primary responsibilities and rights of the States and local governments in controlling air pollution, to support and aid technical research to devise and develop methods of abating such pollution, and to provide Federal

> technical services and financial aid to State and local government air pollution control agencies and other public or private agencies and institutions in the formulation and execution of their air pollution abatement research programs."

Volume 2, United States Code Congressional News, 1955, in discussing the above Federal Pollution Law said at page 2459 (App. 11b):

> "The Committee recognizes that it is the primary responsibility of state and local governments to prevent air pollution. The bill does not propose any exercise of police power by the Federal Government and no provision invades the sovereignty of states, counties or cities."

This Act was adopted by Congress with the intention of aiding various communities in their air pollution programs and at the same time Congress determined that air pollution would be the primary responsibility of local governments. We must assume that Congress is aware of the danger of air pollution and it hardly seems possible that while aiding such programs as provided for in the statute that Congress intended that those engaged in interstate commerce would be immune from prosecution by the various communities that the Federal Government was aiding, the defense of those engaged in interstate commerce being only that they did not wish to install or provide equipment that would comply with the emission standards of the particular ordinance.

(B) The Ordinance is Severable and Therefore Does Not Conflict with Federal Legislation.

The Common Council of the City of Detroit, in adopting the Smoke Abatement Code, provided for a severability clause as evidenced by Article 3, Section 3.1, which procides (App. 4b):

> "(3.1) If any clause, sentence, paragraph or part of this Ordinance, or the application thereof to any person, firm, corporation or circumstances, shall for any reason be adjudged by a Court of competent jurisdiction to be unconstitutional or invalid, said judgment shall not affect, impair or invalidate the remainder of this Ordinance and the application of such provision to other persons, firms, corporations or circumstances, but shall be confined in its operation to the clause, sentence, paragraph or part thereof directly involved in the controversy in which such judgment shall have been rendered and to the person, firm, corporation or circumstances involved. It is hereby declared to be the legislative intent of this body that this Ordinance would have been adopted had such invalid provisions not been included."

It is a fundamental principle that a statute or ordinance may be valid in one part and invalid in another part, and that, if the invalid part is severable from the rest, the part which is valid may be sustained. Accordingly, the fact that a statute or an ordinance is void in part does not necessarily render the whole statute or ordinance invalid; a court will sustain those parts which are valid and which are not necessarily dependent upon, or which are independent of, and not necessarily connected with, the void parts. *Southern Pacific Co. v. Portland*, 227 U. S. 559, 57 L. Ed. 642, 33 S. Ct. 308, aff'g 177 Fed. 958; *Western Union Tel. Co. v. Richmond*, 224 U. S. 160, 56 L. Ed. 710, 32 S. Ct.

449, aff'g 178 Fed. 310; *Lowe v. City Council of Augusta*, 45 F. Supp. 143. In other words, if the different sections of an ordinance are independent of each other, the invalid portion thereof may be eliminated and the valid sections may be retained and enforced. Or, as it also has been said, where the unconstitutional or void provision or part of a statute or ordinance can be severed from other parts, the Court may not be required to pass on the validity of the other parts. The test is: Has the legislative body manifested an intention to deal with a part of the subject-matter covered, irrespective of the rest of the subject-matter? If such intention is manifest, the subject-matter is separable, otherwise not. *El Paso & N. W. Ry. Co. v. Gutierrez*, 215 U. S. 87, 97, 54 L. Ed. 106, 30 S. Ct. 21, 25; *Employers' Liability Cases*, 207 U. S. 463, 52 L. Ed. 297, 28 S. Ct. 141. The leading case on this matter would be *Williams v. Sandard Oil Co.*, 278 U. S. 235, 73 L. ed. 287, 49 Sup. Ct. 115.

The appellant claims that Section 2.16 and Section 2.17 of the City of Detroit Ordinance (R. 37) (App. 6a) are in conflict with Federal legislation. We wish to point out that to carry out the purposes of the Ordinance it would not be necessary to have Section 2.16 or 2.17 contained in the ordinance. The intention of the City of Detroit is the regulation of air pollution, not inspection and licensing, which is only one of many ways adopted to help enforce the purpose of the ordinance. Sec. 2.2A which prohibits the emission of dense smoke, and Sec. 3.1 which provides for a penalty for violating the ordinance are not dependent on any other part of the ordinance and are therefore severable and any conflict with the Federal law would not void the ordinance so as to affect the City's right to regulate air pollution.

We submit that the Congress of the United States had no intention of regulating air pollution when they adopted

the laws pertaining to steamships; that Congress has determined as a matter of policy that the control of air pollution rests with the states and municipalities; that if there is any conflict with the Federal regulation the ordinance of the city of Detroit is severable and that part which may be invalid would not apply and the valid part would still be enforceable. Therefore, we must conclude that there is no pre-emption by Federal Law.

II.

IF CONGRESS HAS NOT EXPRESSLY PRE-EMPTED THE FIELD, THE DETROIT SMOKE ORDINANCE MATERIALLY AFFECTS INTERSTATE COMMERCE IN MATTERS WHERE UNIFORMITY IS NEEDED.

Since *Cooley v. Warden*, 12 Howard (U. S.) 299, 13 L. ed. 996, the law has been as stated in *15 C. J. S.* See Commerce, Sec. 11, page 268:

> "However the constitutional grant to Congress of power to regulate interstate commerce, although operating of its own force to curtail state power in some measure, does not forestall all state action affecting interstate commerce; it does not withdraw from the states power to legislate in respect of their local concerns, even though such legislation may indirectly and incidentally affect interstate commerce. Although state legislation affects interstate commerce incidentally, indirectly, or remotely, yet where it does not undertake to regulate such commerce and is no more than a bona fide, legitimate, and reasonable exercise of the reserved police power of the state in respect of a matter of local or internal concern, it is valid and * * * will stand, in the absence of conflicting and superseding legislation by congress in the exercise of its superior authority to regulate commerce among the states."

In the absence of paramount regulation thereof by Congress the States may regulate matters which are not national in character and do not admit of only one system or plan of regulation, but which are of a local nature, admitting of diversity of treatment according to local exigencies, although affecting interstate or foreign commerce and falling within the regulatory power of Congress, should that body see fit to act in the premises, and this Court has so stated in the following cases:

In the case of *Smith v. Alabama*, 124 U. S. 465, 31 L. ed. 508, 8 S. Ct. 564, the State of Alabama had enacted a law requiring that engineers operating any train in the State of Alabama apply and be examined for a license to operate a train within said State. The Supreme Court of the United States in upholding the validity of the State Act said:

> "In conferring upon Congress the regulation of commerce *it was never intended to cut states off from legislating on all subjects relating to the health, life and safety of their citizens though the legislation might indirectly affect the commerce of the country.* Legislation in a great variety of ways may affect commerce and persons engaged in it without constituting a regulation of it within the meaning of the Constitution." (Emphasis supplied.)

In *Atlantic Coast Line Railroad Co. v. Georgia*, 234 U. S. 280, 58 L. Ed. 1312, 34 S. Ct. 829 the Atlantic Coast Line Railroad Company, the plaintiff, in error, was convicted of violating a statute of the State of Georgia known as the "Headlight Law", which provided that trains while operating in Georgia must have a certain type of headlight. Pub. Laws (Ga.) 1908, pp. 50, 51; Civil Code, 2697, 2698. In defense it was insisted that the act contravened the commerce clause and the 14th Amendment of the Constitution of the

United States. It was argued that if Georgia may prescribe an electric headlight, other states through which the road runs may require headlights of a different sort; that, for example, some may demand the use of acetylene and that others may require oil; and that, if state requirements conflict, it will be necessary to carry additional apparatus and to make various adjustments at state lines, which would delay and inconvenience interstate traffic.

But the court ruled that these possible inconveniences could not affect the question of power in each state to make reasonable regulations for the safety of passengers on interstate trains as, in its judgment, all things considered, is appropriate and effective. In thus deciding, the court said:

> "The states are not denied the exercise of their power to secure safety in the physical operation of railroad trains within their territory, even though such trains are used in interstate commerce. That has been the law since the beginning of railroad transportation. It was not intended that, pending Federal action, the use of such agencies, which, unless carefully guarded, was fraught with danger to the community, should go unregulated, and that the states should be without authority to secure needed local protection. The requirements of a state, of course, must not be arbitrary, or pass beyond the limits of a fair judgment as to what the exigency demands, but they are not invalid because another state, in the exercise of a similar power, may not impose the same regulation."

In *Erb v. Morasch*, 177 U. S. 584, 44 L. ed. 897, 20 S. Ct. 819, the Court in upholding the right of a city to regulate the speed of trains in the city said:

> "* * * that a city, when authorized by the legislature, may regulate the speed of railroad trains

within the city limits. *Richmond, F. & P. R. Co. v. Richmond*, 96 U. S. 521, 24 L. ed. 734; *Cleveland, C. C. & St. L. R. Co. v. Illinois ex rel. Jett*, 177 U. S. 514, *ante*, 868, 20 Sup. Ct. Rep. 722. Such act is, even as to interstate trains, one only indirectly affecting interstate commerce, and is within the power of the state until at least Congress shall take action in the matter."

Clason v. Indiana, (306 U. S. 439-444), 83 L. ed. 858, 59 S. Ct. 609, was an appeal by defendant from a judgment of the Supreme Court of Indiana affirming a conviction in the Elkhart Circuit Court of violating a state statute by transporting a dead horse over the highways of the state and into another state without the required license. The Court said in part:

"The power of the State to prescribe regulations which shall prevent the production within its borders of impure foods, unfit for use, and such articles as would spread disease and pestilence, is well established. Such articles, it has been declared by this court, are not the legitimate subject of trade or commerce, nor within the protection of the commerce clause of the Constitution * * *. Nor does it make any difference that such regulations incidentally affect interstate commerce, when the object of the regulation is not to that end, but is a legitimate attempt to protect the people of the State."

Sligh v. Kirkwood, 237 U. S. 52, 59, 60, 59 L. ed. 835, 837, 838, 35 S. Ct. 501.[1]

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[1] The Courts have also upheld state action in the following cases:

A statute obligating every ship arriving from or bound to any foreign port, and every ship of 75 tons or more, sailing or bound to any port not within the River Delaware, to receive a pilot. *Cooley v. Port Wardens* (1851), 12 How. (U. S.) 299, 13 L. ed. 996; and to the same effect, *Ex parte McNeil* (1872), 13 Wall. (U. S.) 236, 20 L. ed. 624.

(Continued on next page)

The question before this court is not only whether there is a direct or indirect burden on interstate commerce but whether the national interest outweighs the interest of the city or local government.

In *Parker v. Brown* (317 U. S. 341-368, 63 S. Ct. 307, 87 L. ed. 315), the question for consideration was whether the marketing program adopted for the 1940 raisin crop under the California Agricultural Prorate Act is rendered

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(Continued from preceding page)

A statute authorizing the construction of a bridge over a navigable river whose waters lay wholly within the state, although the bridge would prevent the passage of many ships engaged in interstate and foreign commerce. *Gilman v. Philadelphia* (1866), 3 Wall. (U. S.) 713, 18 L. ed. 96.

An act of Alabama for the improvement of the river, bay and harbor of Mobile. *Mobile County v. Kimbell* (1881), 102 U. S. 691, 26 L. ed. 238.

A regulation whereby a drawbridge over a navigable river wholly within the state was not to be raised during a period of one hour each morning and evening, and only for ten minutes at a time during the rest of the day. *Escanaba & L. M. Transp. Co. v. Chicago* (1883), 107 U. S. 678, 27 L. ed. 442, 2 S. Ct. 185.

A municipal ordinance requiring the payment of wharfage charges for use of a city-owned wharf. *Parkersburg & O. River Transp. Co. v. Parkersburg* (1883), 107 U. S. 691, 27 L. ed. 584, 2 S. Ct. 732.

An act of Louisiana which, in connection with State quarantine laws, imposed a fee for the examination of ships and their passengers at a station on the Mississippi River more than 75 miles below New Orleans. *Morgan's L. & T. R. & S. S. Co. v. Board of Health* (1886), 118 U. S. 455, 30 L. ed. 237, 6 S. Ct. 1114.

A statute prohibiting the operation on any highway in the state of any vehicle exceeding prescribed limitations in size, or any vehicle not constructed or equipped as required by the statute, and also prohibiting the transportation of any load exceeding the dimensions and weight allowed by the act. *Sproles v. Binford* (1932), 286 U. S. 374, 76 L. ed. 1167, 52 S. Ct. 581; and see *South Carolina State Highway Department v. Barnwell Bros.* (1938), 303 U. S. 177, 58 S. Ct. 510.

invalid by the Sherman Act, or by the Agricultural Marketing Agreement Act of June 3, 1937, as amended, 7 USCA, 601 *et seq*, or by the Commerce Clause of the Constitution. The Court in declaring that there was no need for uniformity of regulation and that the commerce clause did not preclude the enforcement of the State Act said:

> "When Congress has not exerted its power under the Commerce Clause, and state regulation of matters of local concern is so related to interstate commerce that it also operates as a regulation of that commerce, the reconciliation of the power thus granted with that reserved to the state is to be attained by the accommodation of the competing demands of the state and national interests involved. See *DiSanto v. Pennsylvania*, 273 U. S. 34, 44, 71 L. ed. 524, 530, 47 S. Ct. 267 (with which compare *California v. Thompson*, 313 U. S. 109, 85 L. ed. 1219, 61 S. Ct. 930, *supra*); *South Carolina State Highway Dept. v. Barnwell Bros.*, 303 U. S. 177, 82 L. ed. 734, 58 S. Ct. 510, *supra*; *Milk Control Bd. v. Eisenberg Farm Products*, 306 U. S. 346, 83 L. ed. 752, 59 S. Ct. 528; *Illinois Natural Gas Co. v. Central Illinois Pub. Serv. Com.*, 314 U. S. 498, 504, 505, 86 L. ed. 371, 375, 376, 62 S. Ct. 384.
>
> "Such regulations by the state are to be sustained, not because they are 'indirect' rather than 'direct', see *DiSanto v. Pennsylvania*, 273 U. S. 34, 71 L. ed. 524, 47 S. Ct. 267, *supra*; cf. *Wickard v. Filburn*, 317 U. S. 111, *ante*, 122, 63 S. Ct. 82, *supra*, not because they control interstate activities in such a manner as only to affect the commerce rather than to command its operations. But they are to be upheld because upon a consideration of all the relevant facts and circumstances it appears that the matter is one which may appropriately be regulated in the interest of the safety, health and well-being of local communities, and which, because of its local character and the practical difficulties involved, may

> never be adequately dealt with by Congress. Because of its local regulation without substantially impairing the national interest in the regulation of commerce by a single authority and without materially obstructing the free flow of commerce, which were the principal objects sought to be secured by the Commerce Clause. See *Minnesota Rate cases (Simpson v. Shepard), supra* (230 U. S. 398-412, 57 L. ed. 1540-1547, 33 S. Ct. 729, 48 L. R. A. (NS) 1151, Ann Cas 1916A 18); *California v. Thompson, supra* (313 U. S. 113, 85 L. ed. 1221, 61 S. Ct. 930). There may also be, as in the present case, local regulations whose effect upon the national commerce is such as not to conflict but to coincide with a policy which Congress has established with respect to it."

We believe the interest of the city is paramount when weighing the national interest versus the local needs. It does not seem proper that appellant should be allowed to emit dense black smoke to the detriment of the health and comfort of the citizens of Detroit because they are engaged in interstate commerce. We have cited many cases extensively because they indicate better than any argument that could be found, the extent of the authority of the state to exercise its police power to protect the health and safety of its citizens where such power also affects interstate commerce. These cases also indicate to some extent that in matters of health and safety the "nesessity of uniformity" is the exceptional case and not the rule when the object of the regulation is not commerce but a legitimate attempt to protect the people of a state or city.

At the trial of this matter there was testimony to the effect that there was equipment available which if installed would comply with the ordinance and be approved by the Coast Guard (R. 14-15-16). Common sense dictates that such equipment be employed by the appellant and other

ship owners, who come within the city limits of the City of Detroit.

In *Northwestern Laundry v. DesMoines*, 239 U. S. 486, 60 L. ed. 396, 36 S. Ct. 206, the City of Des Moines adopted an ordinance which prohibited the emission of dense smoke and declared that such smoke was a nuisance. There was argument to the effect that the ordinance would require the remodeling of old or the reconstruction of new heating devices; also that there did not appear to be any known devices which would permit compliance with the terms of the ordinance. The Court in upholding the validity of the municipal ordinance said:

> "So far as the Federal Constitution is concerned, we have no doubt the State may by itself, or through authorized municipalities, declare the emission of dense smoke in cities or populous neighborhoods a nuisance and subject to restraint as such; and that the harshness of such legislation, or its effect upon business interests, short of a merely arbitrary enactment, are not valid constitutional objects. Nor is there any valid Federal constitutional objection in the fact that the regulation may require the discontinuance of the use of property, or subject the occupant to large expense in complying with the terms of the law or ordinance."

It should be noted that the ship in question, the S. T. Crapo, was built 33 years ago in 1927. For all practical purposes such a ship, in considering depreciation, is almost obsolete. The argument that money will have to be spent for new equipment is neither a valid legal argument nor is it a valid economic argument (Pl. Ex. 2 R. 38).

Harmon v. City of Chicago, 110 Ill. 400, was an early case wherein the Supreme Court of the State of Illinois upheld a Chicago ordinance which regulated the emission

of dense smoke by tugboats engaged in interstate commerce. They concluded that such an ordinance was not in conflict with Section 8, Article 1 of the Federal Constitution which declares that "Congress shall have the power to regulate commerce." Such a regulation by the city does not impose any restraint on the use of such vessels, although engaged in general commerce, other than is consistent with law. Controlling the use of tugboats towing vessels in and out from the harbor is in no sense in conflict with the power existing in Congress to regulate commerce with foreign nations and among the several States.

We think that the cases that have been cited show that the States have exercised authority over interstate commerce in almost every field of commercial endeavor, and, the State regulations have been upheld because the interest of the state or municipality was paramount to the national interest; it should also be noted that in the cases cited that the municipalities and states were exercising their authority to protect the health, safety and welfare of their citizens which is their right under the police power, such legislation not being aimed at interstate commerce. We believe the language contained in *Union Brokerage Co. v. Jensen*, 322 U. S. 202, 88 L. ed. 1227, 64 S. Ct. 70, most clearly states the position of the City of Detroit in this matter, wherein the court said:

> "But the Commerce Clause does not cut the States off from all legislative relation to foreign and interstate commerce. *South Carolina Highway Dept. v. Barnwell Bros.*, 303 U. S. 177, 82 L. ed. 734, 58 S. Ct. 546, 115 A. L. R. 944. Such commerce interpenetrates the States, and no undisputed generality about the freedom of commerce from state encroachment can delimit in advance the interacting areas of state and national power when Congress has not by legislation foreclosed state action. The

incidence of the particular state enactment must determine whether it has transgressed the power left to the States to protect their special state interests although it is related to a phase of a more extensive commercial process.

We have considered literally scores of cases in which the States have exerted authority over foreign corporations and in doing so have dealt with aspects of interstate and foreign commerce. Whatever may be the generalities to which these cases gave utterance and about which there has been, on the whole, relatively little disagreement, the fate of state legislation in these cases has not been determined by these generalities but by the weight of the circumstances and the practical and experienced judgment in applying these generalities to the particular instances.

To deny the States the power to protect such special interests when Congress has not seen fit to exert its own legislative power would be to give an immunity to detached aspects of commerce unrelated to the objectives of the Commerce Clause. By its own force that clause does not imply relief to those engaged in interstate or foreign commerce from the duty of paying an appropriate share for the maintenance of the various state governments. Nor does it preclude a State from giving needful protection to citizens in the course of their contacts with businesses conducted by outsiders when the legislation by which this is accomplished is general in its scope, is not aimed at inter-state or foreign commerce, and involves merely burdens incident to effective administration."

(A). Only the Detroit Ordinance is Before the Court.

It is the contention of the appellees that the only matter before the court is the validity of the Detroit Smoke Abatement Code and not some ordinance or some situation that is beyond the record before this Court. It is always possible to take any legislation and by presenting hypothetical situations have such legislation appear unreasonable and unconstitutional. We think the language used by the court in *Lake Shore & Michigan Southern Railway Company v. Ohio*, 173 U. S. 285, 43 L. ed. 702, is most appropriate:

> "Imaginary cases are put for the purpose of showing what might be done by the state that would seriously interfere with or discriminate against interstate commerce, if the statute in question be upheld as consistent with the Constitution of the United States. Without stopping to consider whether the illustrations referred to are apposite to the present inquiry, it is sufficient to say that it is always easy to suggest extreme cases for the application of any principle embodied in a judicial opinion. Our present judgment has reference only to the case before us, and when other cases arise in which local statutes are alleged not to be legitimate exertions of the police powers of the state, but to infringe upon national authority, it can then be determined whether they are to be controlled by the decision now rendered. It would be impracticable, as well as unwise, to attempt to lay down any rule that would govern every conceivable case that might be suggested by ingenious minds."

and also the statement made by Justice Swayne, in *Gilman v. Philadelphia, supra:*

> "In the pilot case the dissenting Judge drew an alarming picture of the evils to rush in at the breach made, as he alleged, in the constitution. None have

> appeared. The stream of events has since flowed on without a ripple due to the adjudication."

We should not view with alarm what other communities are going to do. We believe that the hypothetical cities as have been mentioned will adopt regulations, in good faith, that can be complied with by the appellant. If they (hypothetical cities) adopt regulations that are unreasonable, then we can assume that this Court will be here at that time to deal with that matter.

(B) An Ordinance May Be Made More Restrictive

We find in the case of *Morris v. Duby*, 274 U. S. 135, 71 L. Ed. 966, 47 S. Ct. 548 that the State of Oregon had allowed trucks to have a combined load limit of 22,000 pounds while operating on the state highway. The road in question was an interstate highway and Federal funds had been used in its construction. The State Highway Commission ordered that the combined load be now reduced to 16,500 pounds. One of the plaintiff's complaints was that he had been in competition with the railroads for business and as a result of the load reduction, he would be prevented from doing business except at a loss. The Court, in upholding the right of a State to change its laws and be more restrictive, said:

> "The mere fact that a truck company may not make a profit unless it can use a truck with a load weighing 22,000 or more pounds does not show that a regulation is either discriminatory or unreasonable."

It would appear that a state or municipality would always have the right to change their laws; however, that

fact should not determine that an existing law is unconstitutional. Each ordinance should stand or fall on its own and should not be considered invalid because a legislative body may at a future date make the law unreasonable.

The appellant in his brief cites the case of *People of the State of New York v. Cunard White Star, Limited*, 280 N. Y. 413, 21 N. E. 2d 489 (1939). The case is not in point on any matter that is raised in this case. In the course of its opinion the New York appellate court said this:

> "The validity of the ordinance is not challenged, if its scope is limited to prohibition of the discharge of smoke, avoidable by the use of modern appliances and of methods which are practicable. So limited, the ordinance is reasonably calculated to protect the health and comfort of residents and visitors in the city of New York, and the Legislature has delegated to city officers the power to pass such ordinances. The defendant is engaged in foreign commerce which, though subject to regulation by the Congress of the United States, *is not immune from the police power. The defendant does not claim such immunity.* It asks the court to reverse the conviction for violation of the ordinance, on the ground that the ordinance is unreasonable and the police power does not justify unreasonable obstruction of its business as carried in foreign commerce." (Emphasis supplied.)

The factual situation in the instant case being far different than the situations that exist in the cases cited by the plaintiff, we do not believe they are in point.

We argue that uniformity is not necessary and not desirable. We believe the emission of dense smoke and the control thereof rests logically with local governments. We argue further that considering all the factors that the congress of the United States cannot adequately deal with all

of the problems that are involved in the regulation of air pollution. It is obvious that the restrictions necessary in the industrial areas such as Los Angeles, Pittsburgh and Detroit are not needed or wanted in other areas of the country.

The science of air pollution control has advanced considerably during the past decade. The pollution of the atmosphere has been recognized throughout the nation as an evil which must be controlled if the health and welfare of our population is to be protected. To protect the health of its people is one of the chief functions of the city. To say that the City of Detroit or any city in the union whose waters are traversed by boats which are emitting smoke, ash and fumes injurious to the health and well-being of its inhabitants cannot pass and enforce laws for the protection of its people because such laws might impose upon ship owners the expenditure of sums of money for the installation of devices that science in this field now knows to be effective would be putting a premium on constitutional theory. The city does not seek in this instance to dictate to the owners what they must do or what they must install, but leaves that up to their own discretion and devices; it merely proscribes the emissions from their ships of substances which are deleterious and injurious to the health and well-being of its citizens.

CONCLUSION

We request that the court determine that the City of Detroit may prosecute the appellant for emitting smoke in violation of the terms of the Detroit smoke ordinance, and that the decree of the lower court be affirmed and that the smoke ordinance of the City of Detroit be held constitutional.

Respectfully submitted,

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APPENDIX

STATUTES

70 Stat. 223, 46 U. S. C. 391 (1952 ed.)

(a) The head of the department in which the Coast Guard is operating shall require the Coast Guard to inspect before the same shall be put into service, and at least once in every year thereafter, the hull of every steam vessel carrying passengers; to determine to its satisfaction that every such vessel so submitted to inspection is of a structure suitable for the service in which she is to be employed, has suitable accommodations for passengers and the crew, and is in a condition to warrant the belief that she may be used in navigation, with safety to life, and that the vessel is in full compliance with the applicable requirements of this title or Acts amendatory or supplementary thereto and regulations thereunder; and if deemed expedient, to direct the vessel to be put in motion or to adopt any other suitable means to test her sufficiency and that of her equipment.

Steam vessels not carrying passengers; biennial inspection

(b) The head of the department in which the Coast Guard is operating shall require the Coast Guard to inspect before the same shall be put into service, and at least once in every two years thereafter, the hull of each steam vessel not carrying passengers; to determine to its satisfaction that every such vessel so submitted to inspection is of a structure suitable for the service in which she is to be employed, has suitable accommodations for the crew,

and is in a condition to warrant the belief that she may be used in navigation, with safety to life, and that the vessel is in full compliance with the applicable requirements of this title or Acts amendatory or supplementary thereto and regulations thereunder; and if deemed expedient, to direct the vessel to be put in motion or to adopt any other suitable means to test her sufficiency and that of her equipment.

Sail vessels over 700 tons or other vessels and barges over 100 tons carrying passengers; annual inspection

(c) The head of the department in which the Coast Guard is operating shall require the Coast Guard to inspect before the same shall be put into service, and at least once in every year thereafter, the hull of each sail vessel of over seven hundred gross tons carrying passengers for hire and all other vessels and barges of over one hundred gross tons carrying passengers for hire; and to determine to its satisfaction that every such vessel so submitted to inspection is of a structure suitable for the service in which she is to be employed, has suitable accommodations for the passengers and crew, and is in condition to warrant the belief that she may be used in navigation with safety to life.

Requirements and enforcement; appeals

(d) Whenever it is found on board any vessel subject to the provisions of this title, or any Acts amendatory or supplementary thereto, that any equipment, machinery, apparatus, or appliances do not conform to the requirements of law or regulations promulgated thereunder, the owner or master of said vessel shall be required to place the same in proper condition; and if there shall be found on board any such vessel any life preserver or fire hose so defective as to be incapable of repair, the owner or master shall be required to destroy the same in the presence

of an official designated by the head of the department in which the Coast Guard is operating. In any of the foregoing cases the requirements may be enforced by revoking the certificate of said vessel, and by refusing to issue a new certificate until the requirements have been fully complied with. In any case where the head of the department in which the Cosat Guard is operating has delegated to a Coast Guard official the authority to enforce the said requirements by revocation of certificates of inspection, the action of said Coast Guard official may be reversed, modified, or set aside by the head of the department in which the Coast Guard is operating on proper appeal by the owner or master of said vessel. Appeals shall be made to the head of the department in which the Coast Guard is operating within thirty days after the final action of the aforesaid Coast Guard official.

Exemptions

(e) Vessels subject to inspection under this title or Acts amendatory or supplementary thereto while laid up and dismantled and out of commission may, by regulations established by the head of the department in which the Coast Guard is operating, be exempted from any or all inspection under this section and sections 392, 404, and 405 of this title.

STATUTES

69 Stat. 322, 42 U.S.C. 1857 (1952 ed.)

"In recognition of the dangers to the public health and welfare, injury to agricultural crops and livestock, damage to and deterioration of property, and hazards to air and ground transportation, from air pollution, it is declared to be the policy of Congress to preserve and protect the

primary responsibilities and rights of the States and local governments in controlling air pollution, to support and aid technical research to devise and develop methods of abating such pollution, and to provide Federal technical services and financial aid to State and local government air pollution control agencies and other public or private agencies and institutions in the formulation and execution of their air pollution abatement research programs. To this end, the Secretary of Health, Education, and Welfare and the Surgeon General of the Public Health Service (under the supervision and direction of the Secretary of Health, Education, and Welfare) shall have the authority relating to air pollution control vested in them respectively by this chapter."

SMOKE ABATEMENT CODE

Ordinance No. 167-E

Article 3—Severability

Sec. 3.1. If any clause sentence, paragraph or part of this Ordinance, or the application thereof to any person, firm, corporation or circumstances, shall for any reason be adjudged by a Court of competent jurisdiction to be unconstitutional or invalid, said judgment shall not affect, impair or invalidate the remainder of this Ordinance and the application of such provision to other persons, firms, corporations or circumstances, but shall be confined in its operation to the clause, sentence, paragraph or part thereof directly involved in the controversy in which such judgment shall have been rendered and to the person, firm, corporation or circumstances involved. It is hereby declared to be the legislative intent of this body that this Ordinance would have been adopted had such invalid provisions not been included.

OPINION OF THE ATTORNEY GENERAL OF THE STATE OF MICHIGAN, No. 2370, August 6, 1956

• • • "For the purpose of assisting us in determining whether the administrative officers of the Coast Guard considered this statute as vesting the federal government with authority to control and abate smoke emissions from ships, we addressed an inquiry to Commander F. B. Thatcher, District Legal Officer of the U. S. Coast Guard. In his answer, dated May 16, 1956, Commander Thatcher stated:

> " 'In regard to your letter of 11 May 1956, as to whether the Marine Inspection Laws of the United States or any other laws of the United States concern themselves with the smoke nuisance created by vessels on navigable waters of the United States, you are advised that this officer has found no Federal Laws or regulations which would control this nuisance or make it an offense under the laws of the United States. From a practical standpoint the owners of these vessels, in most instances, have installed smoke arrestors to curb the nuisance and protect themselves against suit arising out of such conditions. The officers have instructed personnel to fire and attend to their marine plants in such a way as to reduce smoke. In most of the cities in coastal regions and in quite a few of the Great Lakes there are specific ordinances directed against this nuisance. At the Port of New Orleans, where I was last stationed, the City of New Orleans had an ordinance imposing a stiff penalty for its violation and while I was there, there were several occasions in which the City penalized the owners, operators and masters for creating this nuisance. Since I have been in this District there has been only one occasion where a smoke nuisance has been called to

my attention and that is at Frankfort, where the Ann Arbor Car Ferries were practically blanketing the Station property with smoke every time one of the vessels entered or left the harbor. These vessels, to my understanding, are equipped with smoke arrestors, but the personnel were not using the equipment and were inept in the manner in which they were firing the boilers. It became necessary to threaten that legal action would be taken in the event the nuisance was not abated and the Railroad has agreed to take all action possible to abate this practice. The only action that possibly the Coast Guard could take would be directed against licenses and certificates of personnel in the event they were found guilty of violating a smoke ordinance or state law and there was a showing of negligence, inattention to duty or misconduct on the part of the licensed or certificated person while working under said license or certificate. (46 U. S. C. 239 as amended.)

" 'In conclusion, it would appear that this is a matter to be regulated and controlled by local authority because of the varying conditions existing in the specific localities and something which could not be legislated upon at the national level.' * * *"

VOL. 2, U. S. CODE, CONGRESSIONAL NEWS, 1955

AIR POLLUTION CONTROL

AIR POLLUTION CONTROL—RESEARCH AND TECHNICAL ASSISTANCE

For text of Act see p. 351

Senate Report No. 389, May 27, 1955 [To accompany S. 928]
House Report No. 968, June 28, 1955 [To accompany S. 928]
The House Report repeats in substance the Senate Report.

Senate Report No. 389

The Committee on Public Works, to whom was referred the bill (S. 928) to amend the Water Pollution Control Act in order to provide for the control of air pollution, having considered the same, report favorably thereon with amendment and recommends that the bill, as amended, do pass.

The amendments are indicated in the bill as reported by line type and italics. The title of the bill has been amended to conform to changes in language and to make clear the objectives of this measure.

PURPOSE OF THE BILL AS AMENDED

Within recent years it has become increasingly evident that the health, comfort, and well-being of our people in many parts of the country are affected by contamination of the atmosphere in which they live. There is acknowledged need to determine the causes of air pollution, the meteorological factors and chemical elements involved, the effects, and possible preventive measures.

The purpose of this bill is to authorize the Department of Health, Education, and Welfare, through the United States Public Health Service, to utilize the resources of the Federal Government and to cooperate with State and local governments and educational institutions in the preparation and execution of programs of research into the problem of air contamination. The bill will make possible technical and financial aid for joint efforts and provides for the collection and dissemination of information which would be valuable to local agencies striving to abate pollution of the atmosphere.

NEED FOR SUCH LEGISLATION

There is no doubt that the emission of fumes and particles into the air above heavily populated communities and industrial centers is causing a condition described in a variety of terms, including "smog" and "smaze."

While a few areas have attracted unusual attention because of air contamination the problem is rapidly becoming serious and causing alarm in many places. Tragic results have followed unexplained occurrences of fumes, fog, and murkiness in the past, as in the Meuse Valley in Belgium, in London, in Donora, Pa., and in Poza Rica, Mexico, during present history.

LEGISLATIVE HISTORY

Considerable publicity has been given to "smog" sieges in Los Angeles and public officials have indicated fear that like conditions may be developing in such widely separated cities as New York and Cleveland.

Commendable efforts are being made in many communities to isolate the causes of air contamination and bring about control for protection of our people. However, the

work underway at present is largely uncoordinated and in need of both acceleration and technical assistance. A solution of the problem is delayed by inadequate observations, insufficient exchange of data, and limited know-how, facilities, and funds.

FEDERAL ASSISTANCE POSSIBLE

There are a number of Federal agencies particularly qualified and equipped to conduct research into the problem of air pollution. Among these are the Weather Bureau, the Bureau of Mines, the Bureau of Standards, the National Institutes of Health, the Agricultural Research Service, and the Atomic Energy Commission.

It is the opinion of the committee that the Department of Health, Education, and Welfare can best coordinate efforts of Federal agencies and cooperate with and aid other bodies, State and local, public and private, in formulating and carrying out research programs directed toward abatement of air pollution.

The laboratories of the Federal Government, the testing techniques, the records of weather conditions, the trained personnel, and the apparatus and equipment now in existence cannot be duplicated easily, quickly, or economically by any non-Federal agency seeking to counteract the air contamination menace.

Consequently, it is the opinion of the committee that the Federal Government should employ its resources to further the attack against pollution of the atmosphere.

EXPLANATION OF THE BILL

It is the opinion of the committee that considerable time may be needed to produce useful results. Therefore, this bill authorizes a 5-year program of research and coopera-

tion. A lesser period would be insufficient to test theories and make painstaking studies. In the opinion of the committee, authorization for Federal participation in the field of air-pollution research is of such great importance as to justify a specific authorizing statute.

The bill would authorize an unusual appropriation, beginning July 1, 1955, and continuing until June 30, 1960, in an amount not to exceed $3 million annually, for expenditure by the Secretary of Health, Education, and Welfare to carry on these functions. The money would be available for technical services by other Federal departments or agencies whose facilities and personnel are employed in the program, and for grants-in-aid to State and local governmental bodies and public and private educational institutions engaged in attempting to solve the air-pollution problem through research.

The grants-in-aid would be provided through agreements whereby qualified and experienced groups would undertake investigations and experiments and would make available to the entire Nation the benefit of their work.

The bill provides for a close integration of effort through an advisory body which would evaluate suggestions about research projects and provide a clearing house for data presently available. The Commission would include both representatives of the Federal Government and non-Federal members whose responsiblities, experience, and interest make them particularly qualified to give counsel and guidance. The President would have the right to select individuals from scientific circles, from industries that might be most concerned, or from the public at large.

REASONS FOR ACTION

The President has recognized the serious nature of the air-pollution problem on several occasions. Already he has created an ad hoc Advisory Committee on Community Air Pollution to canvass the facilities of the Federal Government which might be utilized in attacking it. In his state of the Union message last January he said he would call on Congress to take appropriate action against this menace. In his special health message, he stated:

As a result of industrial growth and urban development, the atmosphere over some population centers may be approaching the limit of its ability to absorb air pollutants with safety to health. I am recommending an increased appropriation to the Public Health Service for studies seeking necessary scientific data and more effective methods of control.

Thus the proposed measure will carry out recommendations from many sources. During the hearings, the committee received testimony in support of the bill from representatives of communities and local governments in all parts of the Nation. The legislation has been endorsed by the American Medical Association, the American Municipal Association, and representatives of county governments.

The committee recognizes that it is the primary responsibility of State and local governments to prevent air pollution. The bill does not propose any exercise of police power by the Federal Government and no provision in it invades the sovereignty of States, counties, or cities. There is no attempt to impose standards of purity.

At the same time, the program which would be made possible by this legislation should stimulate State and local agencies as well as aid them in dealing with phases of the

problem with which they are most immediately concerned. The problem of research into the causes and ultimate elimination of air pollution is so complex and vast that it is not realistic to expect a solution through uncoordinated efforts of a multitude of agencies.

Reports from the Department of Health, Education, and Welfare, the Bureau of the Budget, Department of the Air Force, and the Department of Agriculture, commenting on the provisions of S. 928 as introduced, are as follows:

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